

Violence Against Women Reauthorization Act of 2013: Housing Protections

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NATIONAL HOUSING LAW PROJECT
AMERICAN BAR ASSOCIATION CONFERENCE

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HOUSING JUSTICE

National Housing Law Project

VAWA Reauthorized in 2013

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VAWA 2013 CONTINUES PROTECTIONS UNDER
VAWA 2005 AND PROVIDES NEW PROTECTIONS



VAWA Reauthorized in 2013

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- VAWA 2013 maintains VAWA 2005's housing safeguards, expands the housing programs to which the law applies and adds new protections.
- VAWA 2013's housing protections are effective now.
- HUD's final regulations implementing VAWA 2005, 75 Fed. Reg. 66,246 (October 27, 2010), continue to apply.

Quick Summary of VAWA 2013 Protections

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- VAWA 2013 continues the following:
 - Protections for survivors applying for HUD subsidized housing.
 - Protections against evictions and subsidy terminations.
 - Facilitates safety moves for survivors with Section 8 vouchers.
 - Permits lease bifurcation to remove the perpetrator from the unit.
 - Rules for proving domestic violence, dating violence, or stalking.
 - Obligates PHAs to have plans & goals and describe PHA programs to assist survivors.
- VAWA 2013's new provisions provide for:
 - Coverage of more federal housing programs.
 - Protections to survivors of sexual assault and LGBT survivors.
 - Rights for survivors remaining in housing after lease bifurcation.
 - Expansion of documentation rights to show abuse.
 - What landlords may do when there are conflicting certifications.
 - Development of model plans for use for emergency transfers.
 - Notification concerning VAWA housing rights at three critical junctures in multiple languages.

VAWA 2013: New Housing Safeguards

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**VAWA 2013 CREATES SIGNIFICANT
HOUSING PROTECTIONS FOR SURVIVORS**



VAWA 2005 & 2013: Housing Programs

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Programs that were covered by VAWA 2005:	Programs added by VAWA 2013:
Public Housing	Other HUD programs
Section 8 vouchers	<ul style="list-style-type: none"> • § 236 Multifamily rental housing
Project-based Section 8	<ul style="list-style-type: none"> • § 221d3 BMIR (Below Market Interest Rate)
Section 202 Supportive Housing for the Elderly*	<ul style="list-style-type: none"> • HOME • HOPWA (Hous. Opp. for Pple w/AIDS)
Section 811 Supportive Housing for People with Disabilities*	<ul style="list-style-type: none"> • McKinney-Vento (Homelessness Programs)
	Department of Agriculture
	<ul style="list-style-type: none"> • Rural Development (RD) Multifamily
	Department of Treasury/IRS
	<ul style="list-style-type: none"> • Low-Income Hous. Tax Credit (LIHTC)
<p>*Originally added by HUD regulations. Now provided for in the VAWA 2013 statute.</p>	

Who is Protected?

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VAWA covers people who are subject to:

Domestic violence: Any felony or misdemeanor crimes of violence committed by a current or former spouse, **intimate partner**, person with whom the victim shares a child, person who is or has cohabitated with the victim

Dating violence: Violence committed by a person who is/was in a social relationship of intimate nature with victim as determined by considering three factors

Sexual assault: Any nonconsensual sexual act prohibited by law

Stalking: Any conduct directed toward a specific person that would cause a reasonable person to fear for safety or suffer substantial distress

“Affiliated individual” of the victim: Immediate family or any individual living in the household

Removing the Abuser from the Unit

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- PHA or Section 8 landlord may “bifurcate” a lease to evict a tenant who commits DV while preserving the survivor’s tenancy rights.
- **New protection for tenants remaining in housing as a result of lease bifurcation**
 - If the individual who is evicted is the sole tenant eligible to receive the housing assistance, the PHA or landlord must provide the remaining tenant an opportunity to establish eligibility or a reasonable time to move or establish eligibility for another covered housing program.

Proving DV: Options for Documentation

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1. Self-Certification Form

- New law revised certification process outlined under VAWA 2005 and implemented through HUD Form 50066 (public housing or Section 8 vouchers) and HUD Form 91066 (project-based Section 8).
- Permits PHAs and owners to request certification via form *approved* by appropriate federal agency.
- This form must (1) state that the applicant or tenant is victim; (2) state that the incident is ground for protection meeting requirements under VAWA and (3) include perpetrator's name, *if known and safe to provide*.

2. Police, Court or Administrative Record

- Record can be from a federal, state, tribal, territorial, or local entity or **administrative record**.

3. Statement from Third Party

- Can be from a victim service provider, medical professional, **mental health professional** or attorney.
- Must be signed by both the third party and the survivor under penalty of perjury.

Proving DV: Conflicting Certifications

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- **In cases where 2 household members claim to be the victim and name the other household member as the perpetrator, the housing provider can require third-party documentation.**
 - Included in VAWA statute for the first time in 2013
 - Currently in HUD's implementing regulations for VAWA 2005

Emergency Transfers

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- Survivors living in federally assisted housing often need to move or “transfer” to another subsidized unit to protect their safety.
- The federal agencies administering the programs must adopt model emergency transfer policies for use by PHAs and landlords of covered properties that allow tenants who are victims of DV to transfer to another available and safe dwelling unit assisted under a covered program.
- HUD must establish policies and procedures under which a survivor requesting emergency transfers may receive a tenant protection voucher.

Notification and Language Access

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- HUD must develop a notice that must be given to all tenants in covered developments advising them of their rights under VAWA, if they are denied housing, at the time of admission, or when notified of eviction or termination of assistance.
- HUD guidance prohibiting discrimination against persons with limited English proficiency, 72 Fed. Reg. 2732 (Jan. 22, 2007), applies to the notice.

Enforcing VAWA's Housing Protections

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THE FAIR HOUSING ACT MAY PROVIDE REMEDIES FOR DOMESTIC VIOLENCE SURVIVORS WHO HAVE FACED DISCRIMINATION BECAUSE OF THE VIOLENCE COMMITTED AGAINST THEM



Enforcing VAWA's Housing Protections

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- No enforcement mechanism explicitly provided by VAWA's housing provisions
- Private right of action under VAWA
 - VAWA 2005 – unlikely
 - VAWA 2013 - ?
- Could raise VAWA protection as eviction defense
- Federal Fair Housing Act and related state/local fair housing laws also may provide remedies

Statistics: Domestic Violence and Sex

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- DV survivors aren't a protected class under the FHA or most state fair housing laws, but most survivors are female.
- Statistics:
 - HUD FHEO DV Memo: "[W]omen are five to eight times more likely than men to be victimized by an intimate partner..." More than 70% of those murdered by their intimate partners are women.
 - U.S. Bureau of Justice Statistics: 85% of victims of intimate partner violence are women.
 - U.S. Dept. of Justice: Among people who rent their homes, women are 7.4% times as likely as men to be victims of domestic violence.

Fair Housing and DV: Theories

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- Advocates have used sex discrimination theories under the Fair Housing Act
 - Disparate treatment: Has been used to challenge actions that were taken against a tenant because of sex-based stereotypes regarding DV.
 - Disparate impact: Has been used to challenge neutral policies that have the effect of treating DV victims more harshly.
- Some cases have claims under both theories.

Common Discriminatory Policies

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- Evictions under “zero tolerance” for crime policies
- Evictions for property damage
- Refusal to rent to an applicant because of a criminal history or poor credit history related to domestic violence
- Refusal to rent to an applicant because of stereotypes about survivors
- Refusal to break a lease early in order to allow a person to escape an abusive situation

Other Issues: State and Local Laws

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- Advocates often raise state and local fair housing laws in tandem with the federal Fair Housing Act.
- Some jurisdictions have enacted housing laws that specifically protect DV survivors.

WASH. REV. CODE ANN. § 59.18.580

(1) A landlord may not terminate a tenancy, fail to renew a tenancy, or refuse to enter into a rental agreement based on the tenant's or applicant's or a household member's status as a victim of domestic violence, sexual assault, or stalking, or based on the tenant or applicant having terminated a rental agreement under RCW 59.18.575.

Ways to Enforce VAWA's Housing Protections

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- **Informal advocacy**
 - Meet with housing provider or write a letter
- **Eviction defenses**
 - Raise violation of VAWA or fair housing laws as eviction defense
- **Administrative complaint with HUD**
 - One-year statute of limitations
 - Memo from HUD's Office of Fair Housing and Equal Opportunity sets forth the theories HUD will use to analyze discrimination against DV survivors. HUD Memo: Assessing Claims of Housing Discrimination against Victims of DV under FHA and VAWA (2/9/11)
- **Civil lawsuits**
 - Two-year statute of limitations under federal Fair Housing Act
 - Private right of action under VAWA 2013?